

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

JOSEPH EATMON,	)	
Register No. 1078410,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 05-4260-CV-C-SOW
	)	
DR. GARCIA, et al.,	)	
	)	
Defendants.	)	

**ORDER**

On October 5, 2005, the United States Magistrate Judge recommended dismissing plaintiff's claims under 28 U.S.C. § 1915A as frivolous and for failure to state a claim on which relief may be granted. The Magistrate Judge further recommended that plaintiff's motion for a temporary restraining order be denied. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on October 20, 2005, and motion to compel an "outside" medical examination filed on October 28, 2005. The issues raised in plaintiff's exceptions and motion to compel were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$255.00 appellate filing fee, regardless of the outcome of the appeal. *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that plaintiff's claims are dismissed, pursuant to 28 U.S.C. § 1915A, as frivolous and for failure to state a claim for which relief can be granted. It is further

ORDERED that plaintiff's motion for a temporary restraining order and motion to compel are denied [5, 11, ].

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: 1-23-06